MT LEGISLATIVE HISTORY

Chapter 389 1989

Bill H _____ S 447 Original bill & hist. ___C

H. Committee on Natural Resources		S. Committee on Agriculture, Livestock & Irrigation	
Hearing Date(s) Mar 13	✓C	Hearing Date(s) Feb 16	✓C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Mar 13	✓C	Feb 16	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Questions From Committee Members:

REP. ROTH asked the sponsor if the intent was to allow the transfer of the boundary between two lots of platted and unplatted subdivisions. SEN. BISHOP said yes, if there was a valid reason.

REP. COHEN asked the sponsor to comment on Ms Macefield's amendments. SEN. BISHOP reviewed them and said he would rather kill the bill than put the amendments on.

Closing by Sponsor:

SEN. BISHOP continued, stating that the objections raised by the opponents with regards to covenants, maintenance districts, and platted SID's could be made to the exemptions that already existed in the law. He said covenants could not be removed, and maintenance districts and SID's would continue as liens on the property.

HEARING ON SB 447

Presentation and Opening Statement by Sponsor:

SEN. BILL YELLOWTAIL, Senate District 50, Wyola, said he was presenting two water plan bills. He said the State Water Plan carried with it suggestions for legislation. He said SB 447 dealt with the priority date of water reservations and accomplished two things. It established the priority date for water reservations at the date when a qualified applicant (a political subdivision) submitted a notice of its intent to apply. It standardized those priority dates at that date, after which the applicant had one year to submit applications and receive the same priority date. At the present time, the priority date coincided with the date of final Board of Natural Resources approval. The problem had arisen that during the time period of submission of application and final approval, water permits could be filed and granted, resulting in a tangle of priority dates.

SEN. YELLOWTAIL said the bill would allow for the reservations to be subordinated to permits to the extent that the permits did not interfere with the reservations. He said this scheme was in effect on the Missouri, and the approach seemed to be workable. He said this provision would apply to basins not yet allocated, such as the Lower Clark Fork, Flathead and Columbia Basins.

Testifying Proponents and Who They Represent:

Gary Fritz, Department of Natural Resources and Conservation
Stan Bradshaw, Montana Council, Trout Unlimited

Ted Doney, Montana Water Resources Association
George Ochenski, Alliance for Montana Water

Proponent Testimony:

GARY FRITZ said the bill was the product of the Water Plan, and in particular, the instream flow strategy portion of that plan. He explained how the priority date for reservations was now established. He said the priority date for a permit was the day you applied. He said that reservations were at a disadvantage, with a priority date established at the end of the process, rather than at the beginning. The Legislature decided to change this process for the Missouri River Basin, which was now in effect. The Legislature also addressed the issue of the permits granted and used in the meantime. He said the board could subordinate reservations to the intervening permit if the permit did not interfere with the purpose of the reservations.

MR. FRITZ said the water plan process considered applying that same concept that the Legislature placed on the Missouri River Basin to all basins in Montana. SB 447 sets up the priority date for reservations at the beginning of the process by the filing of the notice of intent to apply. It also has the same language regarding the subordination of reservations to these intervening permits so long as they do not substantially interfere with the purpose of the reservations.

STAN BRADSHAW testified in support of the bill.

TED DONEY said that the group had a problem initially with the bill, but now supported the bill after talking with Mr. Fritz.

GEORGE OCHENSKI said his organization supported the bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. RANEY asked for an explanation of the bill in layman's terms. MR. BRADSHAW explained the history behind the bill, and said the amendment to the law would allow for the application date of the reservation to be the date of the priority. If later permits could be shown to not affect the reservation, they could be issued with a higher priority.

P. RANEY asked if reservations could be granted ahead of the intervening permits. MR. FRITZ said that was the scenario the Legislature set up with the Missouri system. He said the priority date for the water reservation would be up front, and would thus be senior to the permits issued in the meantime. However, the board had the ability under statute to subordinate the reservation to some or all of those permits. Thus, the board could flip flop some of those priorities.

P. RANEY asked what the criteria would be for putting somebody ahead of somebody who had applied before them. MR. FRITZ said the board would have to decide that the permits would not substantially interfere with the purpose of the water reservation.

P. O'KEEFE commented that the reservations are so large and are reserved for such a future date, that the relative priorities did not matter. MR. FRITZ added that the water reservations were for instream flows for fisheries, health purposes, conservation districts and local governments who might be using the water many years in the future. He reiterated that the board would have the authority to subordinate those reservations in certain instances to a permit which was junior.

EP. GILBERT expressed concern that the reservations made for agriculture or some other industrial used would be competing with reservations made for city or the fisheries, and in a water shortage, chances were that the city and the fisheries would get the water. He asked who in such a situation would get the shaft. MR. FRITZ said he could not answer, because the Board of Natural Resources would make the decision in 1991 regarding who got the reservations, and whether or not the reservations were subordinate to intervening permits.

EP. O'KEEFE clarified that there was not preference in Montana law, as other states had. When the Board of Natural Resources made the decision regarding reservations, they set up an internal preference. He gave the example of the Lower Yellowstone, in which the board set the first preference as domestic; second, agriculture; third, minimum instream flows; and fourth, industrial.

REP. RANEY asked Stan Bradshaw to address Rep. Gilbert's concern. He said there was some confusion regarding water use permits and reservations. He said the former was a permit to take water out of a stream and use, while the latter was to reserve the water for future use or instream purposes. MR. BRADSHAW reiterated that the date of application for a reservation would become the baseline priority date. If water use permits were applied for after the reservation applications, they would be junior to those reservations unless the board decides to subordinate.

REP. GILBERT said that if, upon passage of this bill, DNRC, FWP, and cities applied for reservations, those reservations would take priority over permits, and the river would be tied up. MR. BRADSHAW said that would be correct, unless the board decided to subordinate. MR. FRITZ concurred. REP. GILBERT commented that the bill would allow DFWP and DNRC, conservation districts and cities and towns, not individuals or corporations, to tie up the river. REP. O'KEEFE clarified that DNRC did not get reservations and held no water in the state except for water in storage reservoirs already sold to agriculture. REP. O'KEEFE said DFWP had the authority to make reservations for instream flow with or without this bill. He added that this bill did not create the reservation process, but allowed the Board of Natural Resources could work in the intervening permits.

REP. RANEY asked George Ochenski to comment, and Mr. Ochenski reminded the committee that people with discharge permits could object to further water permits. These were major municipalities and industry who needed the dilution effect of the water in the stream.

Closing by Sponsor:

SEN. YELLOWTAIL commended the committee on the depth of their understanding of the bill, and said the bill would create a system of reasonably coordinating reservations and permits.

DISPOSITION OF SB 447

Motion: REP. BROOKE moved the bill BE CONCURRED IN.

Discussion: REP. O'KEEFE asked Rep. Gilbert why he opposed the bill. REP. GILBERT said he did not like what it did, because it put the state and the public entities ahead of the private entities who have been using the water. He said he would not oppose the bill because he knew we had to do it. REP. O'KEEFE said it would only do this for the six year period, which was half over. After that period, all of the private users would be subordinate to the reserved water rights when the public entities needed the water.

REP. HANNAH said he agreed with Rep. Gilbert, and said there would be more fights like the one in Billings over the city's reservation. He said the local governments operated out of greed, and had a deeper well of resources available to them such as attorneys and staff that put them at an advantage in this type of process over the average person who wanted to challenge the reservation.

REP. O'KEEFE said these disputes would continue even without this bill. He said the situation they spoke about was the abuse of the system that occurred in the Yellowstone because of

the levels of reservations granted in 1978. He said the reservations came up for review every 10 years, and at that time the people in that subdivision could come before the board. He said what Rep. Hannah and Rep. Gilbert saw as a major problem with the reservation system was in fact an individual case. REP. HANNAH asked if they would not be condoning this situation by passing this bill. REP. O'KEEFE said no.

REP. HANNAH asked what was the advantage of the bill. REP. O'KEEFE said it provided a coordination of the private individuals who got water rights on the Missouri between 1985 and 1991 with the reservations granted in 1991. The priority date for those reservations would be 1985 as the statute now stated.

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion that SB 447 BE CONCURRED IN CARRIED 10 to 6, with Rep. Hannah, Rep. Giacometto, Rep. Smith, Rep. Roth, Rep. Owens, and Rep. Gilbert voting no.

HEARING ON SB 450

Presentation and Opening Statement by Sponsor:

SEN. BILL YELLOWTAIL, Senate District 50, opened on the bill which rose from the State Water Plan, in particular the agricultural water use efficiency portion of that plan. He said it was unclear in present law that an irrigator who managed to save water from evaporation or deep percolation could use that saved water with retention of the same priority date. The bill would permit the irrigator who lined a ditch, or put in a sprinkler system, to come back to DNRC in a change proceeding, asking for the opportunity to increase the irrigated acreage on the basis of the saved water.

Testifying Proponents and Who They Represent:

Gary Fritz, Department of Natural Resources and Conservation
Ted Doney, Doney and Thorson Law Firm, Montana Water Resources Association
George Ochenski, Alliance for Montana Water
Stan Bradshaw, Montana Council, Trout Unlimited
Larry Ellis, Helena Valley Irrigation District

Proponent Testimony:

GARY FRITZ said the bill was before the committee to provide an incentive in the statute for people to use their water more wisely, and to conserve and save water. Essentially, he said the bill permitted people to save water that would

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 3-13-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

CS-30

VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO. SB 447 DATE 3-13-89

SPONSOR Sen Yellowtail

NAME (please print)	~~RESIDENCE~~ Representing	SUPPORT	OPPOSE
Gary Fritz	MDNRC	X	
GEORGE OCHENSKI	AMW	X	
Stan Bradshaw	Trout Unlimited	✓	
Jim Quinn	MEIC	✓	
R.A. Ellis	MWRA	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

March 14, 1989

Mr. Speaker: We, the committee on Natural Resources report that SENATE BILL 447 (third reading copy -- blue) be concurred in .

Signed: _____

Bob Raney, Chairman

[REP. REAM WILL CARRY THIS BILL ON THE HOUSE FLOOR]

Senator Bengtson-"It sounds like the governor can revise the state water plan all by himself."

Senator Beck-"Senator Jergeson, do you have an amendment that you want to propose?" Senator Jergeson-"No, I don't."

Amendments and Votes: None

Recommendation and Vote: Senator Galt moved SB 386 DO PASS; Senator Devlin seconded the motion. The motion carried with Senator Williams and Senator Jergeson voting against the motion.

DISPOSITION OF SENATE BILL 416

Discussion: Bob Thompson-"I think they do work extremely well together.(SB 416 with SB 166, SB 167, SB 168, SB 169) The only comment I guess I could make one way or the other about SB 416, it would affect the adjudication process both in regard to the existing one or to the new one, is that if the court accepts late claims 30 days after the issuance of the preliminary decree, I would suspect that the court would have to then reissue the decree so that people would have a chance to see and object to the late claims as contained in the reissued decree. I think it would probably put into the process a bit of an extra step or at least require a renotice, if not by mail perhaps by newspaper publication."

Senator Galt-"Another 180 days?" Bob Thompson-"Possibly."

Senator Galt-"We should give the courts a chance to handle this before we interject more."

Senator Devlin-"I'm at the same opinion. You open this up once and then a couple of years down the line somebody else comes in and 'Hey, we forgot ours, too'. You could go on and on."

Amendments and Votes: None

Recommendation and Vote: Senator Galt moved SB 416 be placed on the table; the motion was seconded by Senator Aklestad. The motion carried unanimously.

HEARING ON SENATE BILL 447

Presentation and Opening Statement by Sponsor: Senator Yellowtail, District 50, stated "I apologize for the

lateness of this. I had the draft request in for a good length of time but pending final action of the Board of Natural Resources on the Montana water plan, which is the source of these issues, the two bills that are before you. It was important to wait and see what the board would do. You're aware of that effort that has gone on for about the last year or more than a year now, according to the law that the legislature set up requiring the Department of Natural Resources to establish this plan. The board adopted the plan a few days ago. Today we will address issues that arose from two sections of the plan. SB 447 relates to the in-stream flow protection part of this plan. One element of the plan was the discussion of in-stream flow protection. SB 447 addresses a technical concern having to do with water reservations for in-stream flow purposes. This arises from the finding that perhaps there is not adequate consideration in the law for reservations for in-stream flow, particularly in relation to water use permits. I have given you my entire understanding of this whole business. I would like Gary Fritz to explain this bill further."

List of Testifying Proponents and What Group They Represent:

Gary Fritz representing the Department of Natural Resources

List of Testifying Opponents and What Group They Represent:

None

Testimony:
Proponents:

Gary Fritz-"This bill is a product of the state water planning process that was approved by the Board of Natural Resources last week. The water plan elements will be submitted to the water policy committee probably today or tomorrow. SB 447 was one of the recommendations that came out of the state water plan advisory council, was recommended for adoption by the department and approved for adoption by the board.

Water reservations work differently than permits. When somebody applies for a water use permit, their priority date is the date in which the application is received by the department. So if you apply for a water right permit, you put 80 acres of land under irrigation, then your priority date is the day we get your application. That's not the way it works for water reservations. Water reservations can only be submitted by public entities. They submit the

application to the Board of Natural Resources and the priority date is not established until the board actually acts on those reservations, which may be years later. Now the legislature has changed that process in the Missouri. As you know, the legislature established a Missouri water reservation system two sessions ago. They decided that the priority date for all water reservations in the Missouri should be July 1 of 1985. The board has not made a decision on those applications and won't be making the decision on those applications until 1990--There are a couple different priority dates, one for the upper Missouri and one for the lower Missouri.

Basically, this bill does two things. The first thing it does, it indicates that the priority date for water reservations would be established by someone filing a notice of intention to apply for a water reservation. So it's consistent with the legislature. It means that the priority date ought to be established up front in the process rather than at the tail end of the process. The second thing that this bill does is--The world doesn't stop when these water reservations are applied for. So on the Missouri the priority date there is 1985, the board won't make a decision on some of those until 1991. People come in to us and ask for permits during that time between 1985 and 1991, so there's 6 years of water right permits that the department has issued. What this bill would do, they would allow the board to subordinate those water reservations to the permits that are issued in the interim."

Questions From Committee Members: Senator Bengtson-"So then priority dates don't mean anything?" Gary Fritz-"Ya, that's the bottom line. Let me explain. The priority date might not mean anything. See, the board has to make a finding that the applicant's permit will not interfere with the purposes of the reservation."

Senator Galt-"Senator Yellowtail indicated that this was for in-stream flow only and that's not true, it's for any reservation?" Gary Fritz-"That's correct."

Closing by Sponsor: Senator Yellowtail closed.

HEARING ON SENATE BILL 450

Presentation and Opening Statement by Sponsor: Senator Yellowtail, District 50, stated "SB 450 arises from another element from the state water plan, that being

the agricultural water use efficiency portion of the plan. This bill relates to the manner--the use of permitting or allowing a water user to reallocate the use for his own purposes of salvage water. This then defines what salvage water is."

List of Testifying Proponents and What Group They Represent:

Gary Fritz representing the Department of Natural Resource
Jo Brunner representing Montana Water Resource Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:
Proponents:

Gary Fritz-"It's a state water plan proposal. It's a proposal that went through a lot of discussion in the water plan. It was eventually approved by the state water plan advisory council and proposed for adoption by the department to the Board of Natural Resources. The board approved it last Thursday and wanted it to be submitted to the legislature. One of the plans submitted to the department was ag water use efficiency. The question was, how can the state provide incentive to water users to improve the efficiency of their operation? This was one means the water plan provided for additional incentive for improving irrigation efficiency use. Bob Thompson provided an amendment for SB 450 and he will explain it." See exhibit 1.

Jo Brunner wanted to go on record as supporting SB 450.

Questions From Committee Members: Senator Beck asked if the problem that Mr. Fritz addressed needed a bill to solve it. Mr. Fritz indicated that it was necessary to have the bill to do so.

Closing by Sponsor: Senator Yellowtail closed.

DISPOSITION OF SENATE BILL 447

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Thayer moved that SB 447 DO PASS. The motion carried with Senator Aklestad voting against the motion.

ROLL CALL

AGRICULTURE COMMITTEE

DATE 2/6/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HUBERT ABRAMS	✓		
SENATOR GARY AKLESTAD	–		
SENATOR ESTHER BENGTSON	✓		
SENATOR GERRY DEVLIN	✓		
SENATOR JACK GALT	✓		
SENATOR GREG JERGESON	✓		
SENATOR GENE THAYER	–		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM BECK	✓		

Each day attach to minutes.